



Appendix D

Virginia Supreme Court Rules

Joining offenses

Sup. Ct. R. 3A:6(b)

Two or more offenses, any of which may be a felony or misdemeanor, may be charged in separate counts of an indictment or information if the offenses are based on the same act or transaction, or on two or more acts or transactions that are connected or constitute parts of a common scheme or plan.

Trial together of more than one offense

Sup. Ct. R. 3A:10(c)

The court may direct that an accused be tried at one time for all offenses then pending against him, if justice does not require separate trials and (i) the offenses meet the requirements of Rule 3A:6(b) or (ii) the accused and the Commonwealth's attorney consent thereto.

Discovery and Inspection

Sup. Ct. R. 3A:11

- A. Application of Rule. This Rule applies only to prosecution for a felony in a circuit court.
- B. Discovery by the Accused.
 1. Upon written motion of an accused a court shall order the Commonwealth's attorney to permit the accused to inspect and copy or photograph any relevant (i) written or recorded statements or confessions made by the accused, or copies thereof, or the substance of any oral statements or confessions made by the accused to any law enforcement officer, the existence of which is known to the attorney for the Commonwealth, and (ii) written reports of autopsies, ballistic tests, fingerprint analyses, handwriting analyses, blood, urine and breath tests, other scientific reports, and written reports of a physical or mental examination of the accused or the alleged victim made in connection with the particular case, or copies thereof, that are known by the Commonwealth's attorney to be within the possession, custody or control of the Commonwealth.
 2. Upon written motion of an accused a court shall order the Commonwealth's attorney to permit the accused to inspect and copy or photograph designated books, papers, documents, tangible objects, buildings or places, or copies or portions thereof, that are within the possession, custody, or control of the Commonwealth, upon a showing that the items sought may be material to the preparation of his defense and that the request is reasonable. This subparagraph does not authorize the discovery or inspection of statements made by Commonwealth witnesses or prospective Commonwealth witnesses to agents of the Commonwealth or of reports, memoranda or other internal Commonwealth documents made by agents in connection with the investigation or prosecution of the case, except as provided in clause (ii) of subparagraph (b) (1) of this Rule.
- C. Discovery by the Commonwealth. If the court grants relief sought by the accused under clause (ii) of subparagraph (b) (1) or under subparagraph (b) (2) of this Rule, it shall, upon motion of the Commonwealth, condition its order by requiring that:

1. The accused shall permit the Commonwealth within a reasonable time but not less than ten (10) days before trial or sentencing, as the case may be, to inspect, copy or photograph any written reports of autopsy examinations, ballistic tests, fingerprint, blood, urine and breath analyses, and other scientific tests that may be within the accused's possession, custody or control and which the defense intends to proffer or introduce into evidence at trial or sentencing.
 2. The accused disclose whether he intends to introduce evidence to establish an alibi and, if so, that the accused disclose the place at which he claims to have been at the time of the commission of the alleged offense.
 3. If the accused intends to rely upon the defense of insanity or feeble-mindedness, the accused shall permit the Commonwealth to inspect, copy or photograph any written reports of physical or mental examination of the accused made in connection with the particular case, provided, however, that no statement made by the accused in the course of an examination provided for by this Rule shall be used by the Commonwealth in its case-in-chief, whether the examination shall be with or without the consent of the accused.
- D. Time of Motion. A motion by the accused under this Rule must be made at least 10 days before the day fixed for trial. The motion shall include all relief sought under this Rule. A subsequent motion may be made only upon a showing of cause why such motion would be in the interest of justice.
- E. Time, Place and Manner of Discovery and Inspection. An order granting relief under this Rule shall specify the time, place and manner of making the discovery and inspection permitted and may prescribe such terms and conditions as are just.
- F. Protective Order. Upon a sufficient showing the court may at any time order that the discovery or inspection be denied, restricted or deferred, or make such other order as is appropriate. Upon motion by the Commonwealth the court may permit the Commonwealth to make such showing, in whole or in part, in the form of a written statement to be inspected by the court in camera. If the court denies discovery or inspection following a showing in camera, the entire text of the Commonwealth's statement shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal by the accused.
- G. Continuing Duty to Disclose; Failure to Comply. If, after disposition of a motion filed under this Rule, and before or during trial, counsel or a party discovers additional material previously requested or falling within the scope of an order previously entered, that is subject to discovery or inspection under this Rule, he shall promptly notify the other party or his counsel or the court of the existence of the additional material. If at any time during the course of the proceedings, it is brought to the attention of the court that a party has failed to comply with this Rule or with an order issued pursuant to this Rule, the court shall order such party to permit the discovery or inspection of materials not previously disclosed, and may grant such other relief as it may deem appropriate.

- A. Application of Rule. This Rule applies only to the prosecution for a misdemeanor which may be punished by confinement in jail and to a preliminary hearing for a felony.
- B. Definitions. For purposes of discovery under this Rule 1) the prosecuting attorney is the attorney for the Commonwealth or the city attorney, county attorney, or town attorney, who is responsible for prosecuting the case; 2) if no prosecuting attorney prosecutes the case, the representative of the Commonwealth shall be the law enforcement officer, or, if none, such person who appears on behalf of the Commonwealth, county, city or town in the case.
- C. Discovery by the Accused. Upon motion of an accused, the court shall order the prosecuting attorney or representative of the Commonwealth to permit the accused to hear, inspect and copy or photograph the following information or material when the existence of such is known or becomes known to the prosecuting attorney or representative of the Commonwealth and such material or information is to be offered in evidence against the accused in a General District Court:
 - 1. Any relevant written or recorded statements or confessions made by the accused, or copies thereof and the substance of any oral statements and confessions made by the accused to any law enforcement officer; and
 - 2. Any criminal record of the accused.
- D. Time of Motion. A motion by the accused under this Rule shall be made in writing and filed with the Court and a copy thereof mailed, faxed, or otherwise delivered to the prosecuting attorney and, if applicable, to the representative of the Commonwealth at least 10 days before the day fixed for trial or preliminary hearing. The motion shall include the specific information or material sought under this Rule.
- E. Time, Place and Manner of Discovery and Inspection. An order granting relief under this Rule shall specify the time, place and manner of making the discovery and inspection permitted and may prescribe such terms and conditions as are just.
- F. Failure to Comply. If at any time during the course of the proceedings, it is brought to the attention of the court that the prosecuting attorney or representative of the Commonwealth has failed to comply with this Rule or with an order issued pursuant to this Rule, the court shall order the prosecuting attorney or representative of the Commonwealth to permit the discovery or inspection of the material not previously disclosed, and may grant such continuance to the accused as it deems appropriate.

- A. Adult Criminal Case. In any cases involving adults charged with crime, the provisions of Rule 7C:5 shall govern discovery.
- B. Juvenile Delinquency Cases. In juvenile delinquency cases, when the juvenile is charged with an act that would be a felony if committed by an adult, or in a transfer hearing or a preliminary

hearing to certify charges pursuant to §16.1–269.1, the court shall, upon motion timely made by the juvenile or the Commonwealth’s Attorney, and for good cause, enter such orders in aid of discovery and inspection of evidence as provided under Rule 3A:11.

In juvenile delinquency cases when the juvenile is charged with an act that would be a misdemeanor if committed by an adult, the court shall, upon motion timely made and for good cause, enter such orders for discovery as provided under Rule 7C:5.

- C. Other Cases. In all other proceedings, the court may, upon motion timely made and for good cause, enter such orders in aid of discovery and inspection of evidence as permitted under Part Four of the Rules, except that no depositions may be taken.
- D. In proceedings concerning civil support, the judge may require parties to file a statement of gross income together with documentation in support of the statement.

